



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 14, 1996

Ms. Cathy Locke
City Attorney
City of College Station
P.O. Box 9960
College Station, TX 77842-9960

OR96-0193

Dear Ms. Locke:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 33450.¹

The City of College Station, (the "city") received several requests for information concerning the personnel records of the requestor. On behalf of the city, you assert that such information is excepted from required public disclosure under section 552.103 of the Government Code. You also assert that sections 552.101 and 552.107 except the requested information from required public disclosure.²

Section 552.103(a) excepts from required public disclosure information relating to litigation "to which the state or political subdivision . . . is or may be a party." Gov't

¹We note that the open records laws were substantially amended by the Seventy-fourth Legislature. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5127 (Vernon) (to be codified as amendments to Gov't Code ch. 552). The amendments to chapter 552 "affecting the availability of information, the inspection of information, or the copying of information, including the costs for copying information, apply only to a request for information that is received by a governmental body on or after September 1, 1995." *Id.* § 26(a), 1995 Tex. Sess. Law Serv. at 5142 (Vernon). A request for information that is received by a governmental body prior to September 1, 1995, is governed by the law in effect at the time the request is made. *Id.*

²You also asserted that the request was not directed to the officer for public records and that the city had no obligation to respond to the request. We note that a request for records need not be addressed to the officer for public records of a governmental body. See Open Records Decision Nos. 497 (1988); 44 (1974).

Code § 552.103(a). More specifically, section 552.103(a) excepts from required disclosure, information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

This exception is designed to keep chapter 552 from operating as a method of avoiding the rules of discovery. Attorney General Opinion JM-1048 (1989) at 4. In Open Records Decision No. 551 (1990) at 3, this office stated:

[Section 552.103] enables governmental entities to protect their position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery, if at all. [citations omitted.] We do not believe that the Open Records Act was intended to provide parties involved in litigation any earlier or greater access to information than was already available directly in such litigation.

Section 552.103(a) requires concrete evidence that litigation is realistically contemplated; it must be more than mere conjecture. Open Records Decision Nos. 518 (1989) at 5, 328 (1982). Thus, to secure the protection of this exception, a governmental body must demonstrate that requested information "relates" to the subject of a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990); *see also* Open Records Decision No. 588 (1991) (contested case under Administrative Procedure Act is litigation for purposes of section 552.103 exception). Whether litigation is actually pending must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

You contend the documents are excepted from disclosure because litigation is pending. You indicate that the city has been sued, in Civil Action No. H-95-493 filed in the Federal District Court for the Southern District of Texas. You did not submit a copy of the complaint to this office, but you have explained that the subject matter of that lawsuit concerns allegations of wrongful discharge. We have reviewed the documents submitted and conclude that the pending litigation is related to most of the documents at issue. Thus, most of the documents are excepted from required public disclosure under

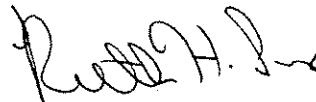
section 552.103 of the act.³ We have also marked some documents that do not appear to be related to the subject of the litigation.⁴

The requestor asserts that he has already seen some of the documents. We note that section 552.103(a) is not applicable to information that has, during the pendency of the litigation or anticipated litigation, been disclosed to an opposing party in the litigation. Such information must be released. In addition, some of the information at issue appears to be public. Publicly posted personnel or job notices and descriptions may not be withheld from disclosure. Gov't Code § 552.007 (chapter 552 prohibits selective disclosure of information). Minutes, ordinances, and other documents disclosed or adopted at public meetings may not be withheld from disclosure. Open Records Decision No. 221 (1979) at 1 ("official records of the public proceedings of a governmental body are the most public of records."). For your convenience, we have marked some of this information.

We also note that although section 552.103(a) is applicable only until the litigation has concluded, some of the information at issue is confidential by law and may not be disclosed even after the litigation has concluded.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

TCC/RHS/ch

Ref: ID# 33450

³Because we have resolved this request under section 552.103 of the act, we decline to consider your arguments concerning other exceptions to disclosure.

⁴We note that it is the city's responsibility to explain how the documents at issue are related to the litigation. It was not obvious to this office, nor did the city explain, how the marked documents relate to allegations of wrongful discharge.

Enclosures: Submitted documents

cc: Mr. J. P. Irving
1200 Marie B. Haines Drive
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(w/o enclosures)